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09/924,667	08/07/2001	Gayle Hargrave-Thomas	5658/749	3666

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EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 12/29/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/924,667

Applicant(s)

HARGRAVE-THOMAS, GAYLE

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20, 22-30 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24 and 25 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-20, 22, 23, 26-30 and 33-35 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office action acknowledges the applicant's Amendment B presented as Paper No. 7. Claims 1-20, 22-30 and 33-35 are pending in the application. Claims 21, 31-32 and 36-37 have been cancelled.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Drawings***

3. The proposed drawing corrections were received on October 10, 2003. These drawings are accepted.

### ***Claim Rejections - 35 USC § 103***

4. Claims 1-5, 7-9, 11, 16-20, 22, 26-30, 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lueth (Des. 314,471) in view of Reinhard (US 3,053,424).

Regarding claim 1, Lueth discloses a rear member having at least one crossbar, a spindle, and a handle (as shown, Figures 1-7).

Lueth lacks or does not expressly disclose a front member connected to the rear member by way of the spindle and adjustable to accommodate a varying number of blades.

Reinhard discloses a case (Figure 1) with a front member (22) connected to the rear member (21) by way of the spindle (12) and adjustable to accommodate a varying

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number of blades. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the case of Lueth with a front member arrangement as taught by Reinhard in order to accommodate a varying number of blades. It would have further been obvious to include the crossbar arrangement of the rear member in the fabrication of the front member in order to maintain the aesthetic qualities of the case.

As to claim 2, the case of Lueth-Reinhard discloses crossbars over the substantial centers of the members.

As to claims 3-5, the case of Lueth-Reinhard discloses a spindle (Reinhard, 12) removably received by receptacle (Reinhard 23) on member (Reinhard 22). Spindle (Reinhard 12) extends through the substantial centers of members (Reinhard 21 and 22) and passes through an arbor hole of blades (Reinhard 5,6, 7, and 8).

As to claim 7, the case of Lueth-Reinhard discloses front and rear members substantially parallel (Reinhard Figure 1).

As to claim 8, the case of Lueth-Reinhard discloses front and rear members that are circular in shape (Lueth, Figure 1 and Reinhard, Figure1).

As to claim 9, the case of Lueth-Reinhard discloses the claimed invention except for the square shape. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the case of Lueth-Reinhard in a square shape in order to prevent rolling during display. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of

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unexpected results. In re Dailey et al., 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. In re Seid, 73 USPQ 431.

As to claim 11, the case of Lueth-Reinhard discloses the claimed invention except for a frame body constructed from a heavy plastic. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the case of Reinhard-Fuller constructed of a heavy plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

As to claims 16 and 17, the case of Lueth-Reinhard discloses a panel (phantom portions extending from the crosspiece of Lueth, Figure 1) capably of receiving an advertisement. The panel covers less than one half of the member.

As to claim 18, the case of Lueth-Reinhard discloses fastening means (Reinhard 54).

As to claims 19 and 20, the case of Lueth-Reinhard discloses the claimed invention except for the specific fastening means. Threaded receptacles and cotter pins were known in the art at the time the invention was made. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select either a threaded receptacle or cotter pin arrangement to secure the cover member in place since the examiner takes Official Notice of the equivalence of either the threaded receptacle or the cotter pin with the butterfly nut disclosed by Reinhard for their use in securing the cover member to the threaded shaft and the selection of any of these known equivalents would be within the level of ordinary skill in the art.

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As to claim 22, the case of Lueth-Reinhard discloses dividers (Reinhard 51) for separating blades (Reinhard 5-8).

Regarding claim 26, Lueth discloses a rear wire frame member having at least one crossbar, a spindle, and a handle (as shown, Figures 1-7). The frame of Lueth is constructed of "wire-like" members and therefore meets the definition of a wire frame.

Lueth does not disclose a front wire frame member connected to the rear wire frame member by way of the spindle, forming a gap that is adjustable to accommodate a varying number of blades.

Reinhard discloses a case (Figure 1) with a front member (22) connected to the rear member (21) by way of the spindle (12) and having a gap to accommodate a varying number of blades. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the case of Lueth with a front member arrangement as taught by Reinhard in order to accommodate a varying number of blades. It would have further been obvious to include the crossbar arrangement of the rear member in the fabrication of the front member in order to maintain the aesthetic qualities of the case.

As to claim 27, the case of Lueth-Reinhard discloses a spindle (Reinhard 12).

As to claim 28, Lueth discloses a spindle attached to the rear member, and Reinhard discloses a spindle received through a receptacle on the front member.

As to claims 29 and 30, the case of Lueth-Reinhard discloses a spindle (Reinhard 12) extending through the substantial centers of members (Lueth Figure 1 and Reinhard 22) and passing through an arbor hole of blades (Reinhard 5,6, 7, and 8).

As to claim 33, the case of Lueth-Reinhard discloses dividers (Reinhard 51) for separating blades (Reinhard 5-8).

Regarding claim 34, Lueth discloses a generally flat rear wire frame member having at least one crossbar, a spindle, a retention means, and a handle (as shown, Figures 1-7). The frame of Lueth is constructed of "wire-like" members and therefore meets the definition of a wire frame. The overall shape of the wire frame member is generally flat.

Lueth does not disclose a front member connected to the rear member by way of the spindle, forming a gap that is adjustable to accommodate a varying number of blades.

Reinhard discloses a case (Figure 1) with a generally flat front member (22) connected to the generally flat rear member (21) by way of the spindle (12) and having a gap to accommodate a varying number of blades. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the case of Lueth with a front member arrangement as taught by Reinhard in order to accommodate a varying number of blades. It would have further been obvious to include the crossbar arrangement of the Lueth rear member in the fabrication of the front member in order to maintain the aesthetic qualities of the case.

As to claim 35, the case of Lueth-Reinhard discloses dividers (Reinhard 51) for separating blades (Reinhard 5-8).

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5. Claims 6 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lueth-Reinhard as applied to claim 1 above, and further in view of Weipert (US 2,636,641).

The case of Lueth-Reinhard discloses the claimed invention except for the retractable handle with handle receptacles.

Weipert discloses a pivotal handle (20) for a receptacle that is retractable towards its mounting plane. Handle (20) is inserted into handle receptacles (16, 17). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the handle of Weipert to the case of Lueth-Reinhard in order to reduce the overall size of the case. The examiner notes that such a folding handle is common and conventional in the container art.

6. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lueth-Reinhard as applied to claim 1 above, and further in view of Hirose et al (US 4,955,471).

The case of Lueth-Reinhard discloses the claimed invention except for the outer covering.

Hirose et al discloses a shipping container (11) with a plurality of packing methods. Hirose et al discloses an outer covering (25) attached to the perimeter of the front and rear members (Figures 8(a)-8(d)) and an outer covering band (14) not attached to the front and rear members (Figures 6(a)-6(b)). Hirose et al further discloses bands (23) of polypropylene (Col. 8, lines 7-8), of which EMPP is a sub group,



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and cover (14) of paper or plastic film (Col. 7, lines 5-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the case of Lueth-Reinhard with covers as taught by Hirose et al in order to protect the contents during shipping and storage.

***Allowable Subject Matter***

7. Claims 24-25 are allowable over the prior art of record.
8. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Response to Arguments***

10. Applicant's arguments filed October 10, 2003 have been fully considered but they are not persuasive.

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11. Applicant's amendment has overcome the rejections based upon the Reinhard-Fuller combination. Applicant's arguments with respect to Reinhard-Fuller are moot in view of the new grounds of rejection.

12. In response to applicant's argument that there is no suggestion to combine the Lueth and Reinhard references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the suggestion to combine can be found in Reinhard (see for example, Col. 1, lines 8-34).

13. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

14. In response to applicant's argument that Lueth discloses a holder, not a carrier, a recitation of the intended use of the claimed invention must result in a structural

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difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Lueth is capable of functioning as a carrier; the upper portion of Figure 1 of Lueth is capable of functioning as a handle.

15. In response to applicant's argument that Lueth does not suggest any functional benefits to the see-through frame, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). The examiner notes that it is Lueth that is modified by the teachings of Reinhard, not the obverse as argued by the applicant.

16. In response to applicant's argument with respect to claims 26 and 34, that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., frame members that are wire) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). A "wire frame", as claimed, is a frame

constructed of wire-like members, and does not necessarily require the frame to be constructed out of wire.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Gregory Pickett  
Examiner  
December 23, 2003

  
**ANTHONY D. STASHICK**  
**PRIMARY EXAMINER**